

Summary Minutes of the  
Delta Protection Commission Meeting  
Thursday, January 22, 2009

ADMINISTRATIVE AGENDA (Items 1-6)

**1. Call to Order/Flag Salute**

Vice Chair van Loben Sels called the meeting to order at 5:35 p.m. He thanked Commissioner Ruhstaller and the City of Stockton for hosting the meeting.

**2. Presentation of Resolutions to Departing Commission Members for Service to the Commission.**

Vice Chair van Loben Sels noted Resolutions of Appreciations for Senator Michael Machado, Robert Calone, Stephen Dresser, Arne Simonsen, and Noah Tilghman.

**3. Introduce and Welcome New Commission Members.**

Vice Chair van Loben Sels introduced Susan Eggman, Dan Ray and Mike Scriven as new members. Commissioner Eggman represents the San Joaquin Council of Governments, Commissioner Ray represents California State Parks, and Commissioner Scriven represents Central Delta Reclamation Districts.

**4. Recognize Commission Member Alternates – Appointed to Date.**

Matt Campbell, Office of the Attorney General outlined the procedures for the appointment of alternates. Mr. Campbell said that alternates would be subject to confirmation by the Commissioners' appointing power and an alternate may serve up to 90 days pending confirmation. He asked that appointments be made in writing to the Commission.

Jim Provenza was introduced as the alternate for Commissioner McGowan. Linda Fiack also noted that alternates appointed to date are Jimmie Yee and Steve Bestolarides. Mr. Yee will serve as the alternate for Commissioner Nottoli and Mr. Bestolarides will serve as the alternate for Commissioner Ruhstaller.

**5. Roll Call**

**Present:** Vice Chair van Loben Sels; Commissioners Armor, Becerra, Dawson, Eggman, Ferguson, Johnston, Kelly, Provenza, Newton, Nottoli, Piepho, Ray, Reagan, Ruhstaller, Trott, Scriven, Daniel Wilson, and Mark Wilson.

**Absent:** Commissioner Cabaldon.

**6. Public Comment**

There were no public comments.

**CONSENT AGENDA (Items 7-22)**

Commissioner Reagan moved Agenda Item 9 to the Regular Agenda.

Commissioner Newton moved Agenda Item 10 to the Regular Agenda.

Commissioner Armor moved approval of the remainder of the Consent Agenda; Commissioner Piepho seconded. The remainder of the Consent Agenda was approved unanimously.

**REGULAR AGENDA (Items 9, 10, 23-32)**

**9. Adopt Commission Meeting Schedule, Including Alternate Dates for 2009 as Discussed at the November 20, 2008 Meeting of the Commission.**

Commissioner Reagan noted that the May 28, 2009 and November 19, 2009 meeting dates would pose a problem as those are the same dates as the California State Association of Counties meetings. Ms. Fiack responded that the May meeting would be moved to May 21, 2009 and the November meeting would be moved to November 12, 2009.

Commission Piepho moved approval of the 2009 Meeting Schedule as amended; Commissioner Armor seconded. The motion was approved unanimously.

**10. APPOINT 2006-2001 Strategic Plan Task Priorities for 2008/2009 Reflective of Commission Discussion on September 25, 2008 and November 20, 2008.**

Commissioner Newton asked that the words “rather than adversarial” be stricken from Item #1, Bullet #3 of the Strategic Plan Tasks.

Commissioner Piepho moved approval of the Strategic Plan Tasks for 2008-2009 as amended; Commissioner Newton seconded. The motion was approved unanimously.

**23. Receive Informational Presentation on the County of San Joaquin General Plan Update Process, Particularly as Relates to the Delta Primary and Secondary Zones, the Policies of the Commission’s Management Plan and the Delta Protection Act.**

Kerry Sullivan, Director, San Joaquin County Community Development Department reported that the County’s General Plan was last approved in 1992, and amended in 1996 to incorporate the Delta Protection Act. She said that there are 33 ordinances in the General Plan and current revisions include an ordinance to encourage the wine industry. Concerns being addressed in the update include water quality, economic development, ag lands and Delta preservation.

Ms. Sullivan stated that the overall process has been open and inclusive—with 90 meetings in total. Completion of the updated General Plan should take three years; the next draft should be released by May 2009, and the final should be released by 2011.

Commissioner Johnston asked if it would be possible to obtain a list of Williamson Act cancellations since 1992 in the Primary and Secondary Zones of San Joaquin County.

Ms. Sullivan responded yes.

**24. Receive Informational Presentation from the Department of Water Resources (DWR) on the Delta Risk Management Strategy (DRMS).**

Mike Floyd and Richard Kranz, DWR, reported that the DRMS started in 2000 with the CALFED Record of Decision which called for an assessment of the risk to Delta levees.

Mr. Floyd stated that Assembly Bill 1200 gave DWR the authority to conduct a comprehensive study of the risks to Delta levees and the consequences of failure. The study would look at the

issues of subsidence, floods, climate change, and earth quakes, and consider what impact levee failures have on water supplies in and out of the Delta; and measures needed to preserve, protect, and improve Delta levees and infrastructure. The project will have two phases. Phase I is to look at the development of a risk analysis to evaluate the impact to Delta levees with a goal intended to guide long term planning efforts; whereas, Phase II is the development of risk reduction/management strategies for long term management of the Delta to reduce risk and consequence of levee failure in the Delta. Mr. Floyd stated that a levee optimization spreadsheet has been developed which identifies the attributes of the Delta islands.

Commissioner Daniel Wilson asked if the levee optimization spreadsheet could be reviewed. Mr. Kranz responded he would check to see whether or not it could be reviewed as it was a work in progress.

Commissioner Kelly asked if the spreadsheet would be posted on the web for public input. Mr. Floyd responded yes, but it has not been decided as to when.

Commissioner Piepho commented that the information distributed versus the information online, particularly with respect to sustainability of the Delta, was conflicting. She asked if DWR was viewing the Delta as a structure or as a water supply. Mr. Floyd responded that the analysis looked at everything as co-equal.

Commissioner Reagan asked if the encroachment by habitat on neighboring agricultural islands (because of flooded islands) has been taken into context. Mr. Kranz responded that there was consideration for inundation of islands but he was not sure of the specifics.

Commissioner Ferguson asked if a determination has been made of the number of cfs needed to flow through the Delta to maintain/sustain a healthy Delta. Mr. Kranz responded that the number was looked at only in regards to salinity.

**25. Receive Informational Presentation from the Governor's Office of Emergency Services (OES) Relative to Senate Bill 27, Delta Emergency Preparedness Act of 2008.**

Steve Sellers, Deputy Director, Office of Emergency Services reported that OES serves as the lead agency for the State's emergency services to support local governments during disasters. The agency works closely with FEMA to provide federal support and with local government, State, and federal agencies for implementation of emergency preparedness and response. Mr. Sellers said that SB 27 designates OES in a lead capacity to develop a response plan for the Delta and define what the organization is in terms of the response plan, as well as to conduct an exercise and validate the aspects of the plan. Mr. Sellers said that he directed staff to work with the Commission, the counties, the appropriate State agencies, and various other stakeholders to lay out an action plan for the Delta. He also said that implementation of the legislation is dependent on funding; therefore the agency is working with DWR to identify bond funds to secure staff support to help with implementation. He distributed a copy of the plan used for the Bay Area.

**26. Receive Informational Presentation From the State Lands Commission (SLC) Relative to Abandoned Vessel Removal Program Legislative Concept.**

Mario DeBernardo reported that SLC has received complaints (as has the Commission), regarding abandoned vessels in the State's waterways. Mr. DeBernardo said that SLC is involved in the issue only because the agency has jurisdiction over tidelands, beds, and navigable rivers and lakes, and his office is working with the Attorney General's Office for the removal of several abandoned vessels at this time. He said that there have been no formal complaints filed in court on the issue because litigation takes too long; therefore, the proposed legislation would give the agency the administrative authority to deal with trespassing and abandoned vessels, and allow SLC to decide the disposition of said vessels—keeping in mind the due process rights of the property owners to be heard at a SLC hearing. Mr. DeBernardo said that there is no funding component for the program, so any costs would be absorbed by SLC staff.

Commissioner Ruhstaller asked why the concept is not modeled after the current abandoned vehicle laws whereby an additional fee is added to the licensing fees. Ms. Fiack indicated that discussions by the abandoned vessels discussion group, initiated and facilitated by Commission staff, have included identifying preventative measures as well as other tools for addressing the issues.

Commissioner Becerra responded that any additional fees would be seriously opposed by the boating community.

**27. Receive Informational Updated From Commission Representatives Serving on the California Aquatic Invasive Species Management Team (CAAIST).**

Commissioner Armor reported that he attended the CAAIST meeting. The purpose of the team is to implement the Aquatic Invasive Species Management Plan which seeks to minimize the impacts of aquatic invasive species. Commissioner Armor said that currently the Commission's Management Plan has no policies regarding invasive species; however, he did see the role of the Commission in the area of communication because of its outreach efforts. He asked for input to take back to the team.

**28. Receive Status Update on the Commission Management Plan Update Process, Including Input from the Management Plan Update Advisory Team and Summary of Public Hearing and CEQA Requirements From the Commission's Legal Advisor.**

Dorian Fougères, Center for Collaborative Policy, reported that the Delta Protection Commission Management Plan Update Planning Advisory Team met six times and had two workshops in February 2009 (in addition to previously held workshops) on the Management Plan Update. Mr. Fougères said that a preliminary draft revised plan has been developed for discussion and includes changing the names of the Environment Element to Natural Resources; the Marine Patrol, Boater Education, and Safety Programs Element to Recreation and Access; updating the Findings Sections by adding introductory text for each element; deleting the Recommendations Sections of each element; and adding cross reference boxes for each element with a glossary. He reported that the next steps would be to include a final meeting of the Planning Advisory Team, two more public workshops, and three formal public hearings to be held by the Commission to consider and discuss finalizing and adopting the revised amendments to the Plan in May 2009.

Matt Campbell stated that the Delta Protection Act requires the Commission to hold three hearings: one each in the North, South, and West Delta; and the hearings must be duly noticed. He said that the Administrative Procedures Act requires that the Commission obtain the recommendations of the Office of Planning and Research (OPR), and promulgate the regulation 45 days before the third public hearing. Promulgation includes a Notice of a Proposed Action, a Published Notice of Proposed Action, an Initial Statement of Reasons and the Proposed Regulation. Mr. Campbell said the information must be published for 45 days and the Commission must have an environmental review and comment of the document. He said that adoption of the updated plan would take at least 12 votes (not a majority of the members present). Moreover, if there are any substantive changes during the hearing process, the update the process would be subject to additional notices.

Commissioner Ruhstaller asked if the County Community Development departments have been notified. Ms. Fiack responded yes, as well as Delta stakeholders.

Commissioner Scriven asked what the idea was of creating a Secondary Zone. Commissioner Johnston explained that the Secondary Zone was created because of the need for a higher level of protection for the statutory Delta.

Commissioner Provenza announced that the County of Yolo had concerns regarding the Management Plan Update. He distributed a handout outlining the County's concerns and suggested amendments, and went over the document for the Commission. Ms. Fiack requested that Commissioner Provenza also follow-up with a letter for consideration of the recommended changes by the Advisory Team.

Commissioner Regan announced that Solano County would also provide comments to the Advisory Team.

Vice Chair van Loben Sels asked for public comment.

Dante Nomellini, Central Delta Water Agency stated that he was alarmed at the language listed in the preliminary draft, that from his perspective, advocated support of the Peripheral Canal. He said the Delta has been degraded in fresh water quality and asked that the Planning Advisory Team pay attention to the recent Delta smelt opinion. He also said that he agreed with the comments made by Yolo County regarding options 1 and 2 on Water Policy 5. He suggested that Water Policy 6 should only contain the language "water rights should be respected and protected" and nothing more.

**29. Consider Recommendation of the Commission's Chair/Vice Chair Nominating Committee for Appointment of Chair of the Commission Consistent with Policy Criteria Established by the Commission.**

Commissioner Piepho reported that the nominating committee (Commissioners Piepho and van Loben Sels) met to discuss recommending names for the position of Chair of the Commission. She said the committee recommended that Commissioner Nottoli serve as the Chair. The election (not appointment) would be for one year as it is a completion of the remainder of the vacant term.

Commissioner Regan moved that Commissioner Don Nottoli be elected to serve as Chair of the Commission; Commissioner Daniel Wilson seconded. The motion was approved unanimously.

**30. Commissioner and Staff Comments/Announcements.**

Commissioner Piepho asked if the Commission would want to meet earlier. Ms. Fiack clarified that the Commission had earlier discussions on meeting times and the concluding decision was to convene at 5:30 p.m. and to hold the meetings in different locations within the Delta, with two consecutive meetings in the same location.

**31. CLOSED SESSION. At a Convenient Time During the Meeting, the Commission May Have a Closed Session, Pursuant to Government Code Section 11126(e), to Conduct Annual Evaluation for the Executive Director as Discussed During Closed Session at the November 20, 2008 Meeting of the Commission.**

The Commission convened into Closed Session at 8:10 p.m. The Closed Session was adjourned at 8:35 p.m.; there was no report out of Closed Session.

**32. ADJOURN**

The meeting was adjourned at 8:35 p.m.